GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT, (LABOUR).

Labour Dispute:—Industrial Dispute between the Workmen and the Management of High Land Coffee Works, Kalnir, Mangalore-2.

Award of the Labour Court, Hubli—Published.

Read the following papers :—

(1) Labour Ex. R-3)-16.57/1379, dated 28th December 1966 from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI

Dated 28th December 1966

Reference (I.D.) (LCH) No. 29 of 1966.

Present :

Sri Syed Azizuddin Ahmed, M.A., B.L. ... *Presiding Officer.*

Between :

The Workmen of Highland Coffee Works, Palni, Mangalore-2. represented by the Secretary, S. K. Coffee, Cardamom and Allied Workers Union, Maidan Road, Mangalore. ... *I Party*

and

The Management of Highland Coffee Works, Kalnir, Mangalore-2, ... *II Party.*

This is a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 made by the Government of Mysore, in their order No. LD 1A 201 LDD 66, dated 23rd May 1966. The Point of Dispute referred for adjudication is as under :—

"Are the Management of M/s. Highland Coffee Works, Kalnir, Mangalore, justified in terminating the services of the workmen Sri Lawrence Monterio and Sri Rosario Ferrao?

If not, to what other reliefs the workmen are entitled ?"

2. The cause of the aggrieved workmen has been sponsored and espoused by the S K. Coffee, Cardamom and Allied Workers' Union, Maidan Road, Margalore through its Secretary. Sri Shantharam Pai appeared for the I Party while Sri K S. Rao, President of the General Managements' Association appeared for the II Party.

3. In response to the notices issued by this Court, the I Party filed its Claim Statement dated 18th June 1966 and the II Party its Counter Statement dated 1st July 1966. The case of the I Party is that Sri Rosario Farrao and Sri Lawrence Montario were daily rated workers doing the work of carrying coffee bags and distributing the coffee to the garbling women workers. On 9th January 1966, while paying wages, the management deducted Rs. 5 each from the wages of these two workers saying that they have been fined for not working in the motor garage of the employer outside the factory premises. It may be stated that it was not the duty of these two workers to work in the garage. They refused to receive their wages for imposing illegal fine. On 13th January 1966 the management suddenly issued a show-cause notice alleging that these two workmen had left the factory premises at 5-30 P.M. without permission and also refused to man the peelar or bullar. The workmen denied the particulars of such an act or omission, in the show-cause notice by submitting their explanation dated 16th January 1966. The management did not serve any charge-sheet to the workmen on receipt of the explanation thereby violating the well settled procedure. A farce of an enquiry was held on 18th January 1966. The workmen opposed this and refused to sign some papers which they could not read. Thereafter, the management served a dismissal order on them dated 20th January 1966 and as per that they were dismissed from service with effect from 22nd January 1966. These workmen never used to work on bullar or peeler. The enquiry is no enquiry at all and it violated all the principles of natural justice. The enquiry proceedings were not given when demanded by the workers. The charges against the workmen are not *bona fide* and the punishment of dismissal is unwarranted, high handed and amounts to victimisation. It is illegal and unjust. It was prayed that the Court may be pleased to order reinstatement with full back wages with effect from 22nd January 1966.

4. The II Party denied all these allegations. It stated that the management issued show-cause notices dated 18th January 1966 to both the workmen for having left the factory premises

on 12th January 1965 at 5-30 P.M. without permission that the working hours were up to 6 00 P M., and also for refu-ing to man the peeler or the huller. As the explanat on was unsatisfactory, a notice of enquiry dated 15th January 1965 was served on them, and enquiry was held as notified above in the presence of both the workmen. They refused to sign the enquiry papers. They did not produce any evidence, nor did they cross-examine the management witnesses though every opportunity was given to them to defend themselves. The charges made against them were proved, the management had to dismiss them in order to maintain discipline in the industry. In addition to the points of dispute stated in the order of reference, the following issue was raised :--

> "Whether the I Party proves that the domestic enquiry conducted by the II Party management is in violation of the principles of natural justice and the punishment inflicted upon the aggrieved workmen is unwarranted, high handed and is actuated by a desire to victimise them."

5. The parties examined one witness each and closed their evidence. The I Party filed three documents as per Exs W-1 to W 3 and the II Party two sets of documents marked Ex. M-1 (a) to M-1(i) and Ex. M 2(a) to M-2(i). A. J. Z. Sultanha, M. W.1 deposed that he held the domestic enquiry in the matter of the misconduct of Sri Lawrence Monteiro and Sri Rosario Ferrao. Ex. M-1 (a) to M-1(i) are the papers of domestic enquiry relating to the former while Ex. M-2 (a) to M-2(i) relate to the latter. The Managing Director had issued the show cause notice. He called for their explanations and then notice of enquiry was given. The management witnesses were examined in the presence of the aggrieved workmen and they were called upon to cross-examine them. They refused to cross-examine the management witnesses and refused to sign the papers. An endorsement has been made to this effect. During the course of cross-examination, he deposed that he held the enquiry in the office. The supervisor had reported him about the refusal of both the workmen to man the machines. The handling of the machines does not require any skill. During working hours 15 minutes of time is given both in the morning as well as in the evening. Ex. W-1 is a copy of the standing order of the factory. Sri Janardhana is the supervisor of the aggrieved workmen. They were not fined at any time. The working hours of the factory are from 8-30 A M to 12-30 P.M. and then from 1-30 P.M. to 6-00 P.M. He held the enquiry separately against each

one of the workmen Ex. M-2 (g) is his report. The enquiry was held in Kanarese and Tulu languages He knows Kanarese He himself translated Ex M 2 to the aggrieved workmen. He denied the suggestion that the enquiry papers are concocted documents. In rebuttal, the I Party examined Lawrence Monteiro, W.W.1. He deposed that on 6th January 1965 the employer asked him and Kasmo Ferrao to work in the garage and they refused to work there On 9th January 1965, each one of them was fined Rs 5. In protest, they did not accept their wages. On 13 th January 1965 a notice was given to both of them to which he did not reply. The working hours of the factory are 8-30 A.M. to 12-30 P.M. and 1-10 P.M. to 6 00 P.M. He left the factory at 5-30 P.M. because he was not given gate pass for tiffin. He was not given any memo regarding his misconduct. The enquiry was held by Sri A. J. Z. Saldanha, M.W.I in the office. They were not asked to cross-examine witnesses or to produce witnesses on their behalf. During the course of his cross-examination he stated that he does not know to whom the garage belongs. He was not appointed as a general mazdoor. Sri William Pinto is his supervisor. He does not know whether Janardhan was their supervisor. Sri Janardhan was examined in his presence during the domestic enquiry and also John Petro. He did not cross-examine the witnesses. Ex. M-1 (a) and M 2 (b) are the memos of charges issued to the aggrieved workmen. The particulars of the charges have been stated thus:

> (1) You had left the factory premises last evening at 5-30 without permission whereas your working hours were up to 6 P.M.
>
> (2) This afternoon when the supervisor Sri Janardhan asked you either to man the peeler or the buffer you refused to do the job. You again refused when asked by Sri A. J. Z. Saldanha, the Manager of the factory who intervened on receiving complaint from the supervisor Sri Janardhan.

Ex. M-1 (c) and M-2 (c) are the explanations of these two workmen. Both of them admit that when asked to man the buffer or peeler they had replied that they were not employed for that job and it was not their duty. Further they had said that without written orders regarding changes in their working conditions, they are unable to man the peeler or buffer. Except the self-serving statement of the witness that they were not asked

to cross-examine the management witnesses or to produce their own, there is nothing on record to substantiate the truth of this. There is no reason to disbelieve the sworn testimony of Sri A.J.Z. Saldanha, a responsible official of the II Party. In their Claim Statement it has been stated that they had been fined for not working in the motor garage of the employer outside the factory premises. But when asked in the cross-examination, the witnesses deposed that he did no know to whom the garage belonged. I do not see the reason why he should feel shy to admit that it was the garage of the employer. There does not seem to be any truth in the statement that the garage was outside the factory premises. However, this is not of much importance. The allegation is that the workmen had refused to obey the order of their supervisor Sri Janardhan. The management had examined Janardhan during the domestic enquiry. Admittedly, he has not been cross-examined by the aggrieved workmen. When cross-examined in the Court, the witness is posed in the manner of a false witness to substantiate that he does not know whether Sri Janardhan was their supervisor. If Janardhan was, in fact, not their supervisor there should be no difficulty in saying so. However, he admits that one Sri William Pinto is their supervisor. He has not cared to put Sri William Pinto in the witness-box and substantiate this piece of statement. There is nothing to suggest that these two workmen are skilled workmen. Obviously, they are unskilled workmen engaged to perform manual work. Sri Saldanha has deposed that the winning of huller and peeler does not require any skill. Both the aggrieved workmen have admitted in Ex. M.1 (c) and M.2 (c) that they had refused to man the huller or the peeler.

The I Party has filed a copy of the standing orders. Article 10 (1) of the same runs thus:

> "A workman is liable to be suspended for a period not exceeding 4 days or dismissed from service without notice or any compensation in lieu of notice, if found guilty of misconduct. Suspension may be imposed by the head of a department; but dismissal shall only be ordered by the factory Manager, after due investigation."

Article 10(iii) enumerates the acts of misconduct and 10(iii)(a) lays down that wilful insubordination, or disobedience to the orders of a superiaor alone or in company with others will be considered as misconduct. The management has held domestic

enquiry and the enquiry officer has recorded his findings as per Ex.M 1(g) and M-2(g). There is nothing to suggest that his findings are perverse. It is also established from record that both the workmen had left the factory premises at 5-30 p.m., while the time of dispersal is 6 p.m. There is no clenching evidence to show that the management intended to victimise these two workmen. There is nothing to suggest that any principles of natural justice have been violated. Principles of natural justice could not be invoked to set aside something properly done in the exercise of a lawful power. In 1963 (2) LLJ page 638/639, the Lordships of the Supreme Court have observed that where the parties agree upon the terms and conditions of service and they are included in certified standing orders, the doctrines of common law or considerations of equity would not be relevent. Where there is no malafide on the part of the employer in dismissing the concerned workmen, the employer must be held entitled to dismiss him following the letter of the relevent laws in the standing orders. The Industrial Court cannot import considerations of harshness and violation of the principles of natural justice in setting aside the order of dismissal. Thus, I do not find sufficient reasons to interfere in the order of dismissal passed by the management. The point of dispute mentioned in the order of dispute is decided in favour of the management and the additional issue against the I Party.

AWARD.

The management of M/s Highland Coffee Works, Falnir, Mangalore are justified in terminating the services of the workmen Sri Lawrence Monterio and Sri Rosario Ferrao. They are not entitled to any relief. The parties shall bear their own costs.

Place: Hubli
Date: 28-12-1966.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli.

ANNEXURE

Reference (ID) (LCH) No. 29/1966.

Witnesses examined for I Party

W.W. 1 Lawrence Monthero

Witnesses examined for II Party

M.W. 1 A. J. Z. Saldanha

Documents marked for I Party

Exhibits :

W-1 Standing Orders of II Party Show-cause notice issued

W-2 to Rosario Ferao dated 13th January 1965 by II Party.

W-3 Explanation submitted by Rosario Ferao dated 15th January 1965.

Documents marked for II Party

M-1(a) Show cause notice dated 13th January 1965 issued to L. Monterio.

M-1(b) Postal acknowledgment dated 14th January 1965.

M-1(c) Explanation dated 15th January 1965 of L. Monterio.

M-1(d) Enquiry notice dated 15th January 1965 to L. Monterio.

M-1(e) Postal acknowledgment dated 16th January 1965.

M-1(f) Enquiry proceedings dated 18th January 1965.

M-1(g) Enquiry Officer's report dated 18th January 1965.

M-1(h) Dismissal Order dated 20th January 1965.

M-1(i) Postal Acknowledgment dated 22nd January 1965.

M-2(a) Show cause notice dated 13th January 1965 issued to Rosario.

M-2(b) Postal Acknowledgment dated 14th January 1965.

M-2(c) Explanation dated 15th January 1965 of Rosario Ferao.

M-2(d) Enquiry notice dated 15th January 1965 to Rosario Fernao.

M-2(e) Postal Acknowledgment dated 16th January 1965.

M-2(f) Enquiry Proceedings dated 18th January 1965.

M-2 g) Enquiry Officer's Report dated 18th January 1965.

M-2(h) Order of dismissal dated 20th January 1965.

M-2(i) Postal Acknowledgment dated 21st January 1965.

Place : Hubli.

Date : 28-12-1966

SYED AZIZUDDIN AHMED,

Presiding Officer,

Labour Court, Hubli.

ORDER.

Bangalore, dated the 10th January 1967.

S. O. 204.—WHEREAS by State Government Order No. PLM 201 LLD 66, dated the 23rd May 1966 the Industrial Dispute between the Workmen and the Management of Hindustan Lever Ltd Coffee Works, Kalvair, Mangalore-2 was referred to the Labour Court, Hubli, for adjudication;

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 201 LLD 66.]

By Order and in the name of the Governor of Mysore,

1935

G. G. PUROHIT, *Under Secy.*